

## REMARKS

The Examiner has maintained the Restriction Requirement with regard to method claim

12. Applicant has cancelled claim 12, such that this Restriction Requirement is moot.

Claims 1-7 have been rejected under 35 U.S.C. § 112, due to an alleged lack of support for "the disk and nozzle being spaced apart". Applicant respectfully notes that the drawings clearly support this limitation. For example, in Figure 2, the nozzle 26 is spaced apart from the disk 28, since the nozzle 26 is on the back wall and the disk 28 is mounted substantially centrally on the top wall. Similarly, in Figure 3, the nozzles 26 are located on the back wall and are spaced apart from the disks 28 which are located approximately midway between the front and back walls of the dishwasher. Furthermore, the water jets indicated by the arrows 32 in Figures 2 and 3 make clear that the nozzle 26 is spaced apart from the disk 28. Figure 4 also shows nozzles 46 located on the back wall of drawers 42, 44, with the disks 50 spaced apart from the nozzles, with a corresponding water jet indicated by arrows 58 confirming that the nozzles and disks are spaced apart. Therefore, the application as originally filed clearly supports the limitation in independent claims 1 and 4 that the nozzle and disk are spaced apart. Accordingly, the § 112 rejection of the claims should be withdrawn.

The drawings have been objected to due to the reference numeral 28 designating both the racks and the disks. Applicant has amended the specification at page 3, line 20 to provide that the racks are designated by the numeral 24, rather than the numeral 28. Therefore, this objection to the drawings should be withdrawn. Applicant has also amended page 3, line 16, to correct the reference numeral 26 for the nozzles in Figure 3.

The Specification has been objected to due to the failure including a detailed description of Figure 1. Applicant has amended the Specification at page 2, line 26 to specifically refer to

Figure 1. Accordingly, Applicant respectfully requests the objection to the Specification be withdrawn.

Independent claim 4 and dependent claims 6 and 7 have been rejected under 35 U.S.C. § 102 as being anticipated by Snyder, Jordan or Braden. Claims 1-3 and 5 have been rejected under 35 U.S.C. § 103 as being obvious over the German Patent DE '214, or the European Patent EP '720, in view of Jordan, and further in view of the European EP '876. Applicant respectfully traverses these rejections, and requests reconsideration of the claims.

Applicant has not amended any of the pending claims 1-7.

Independent claim 4 requires that the water nozzle direct a water jet toward the disk "in a direction transverse to an axis of rotation of the disk". This limitation is described in the Specification and shown in the drawings of the application. At page 3, lines 4-5, the Specification describes that the disk 28 is mounted for rotation about a vertical axis. See the disk 28 shown in Figures 2 and 3. Page 3, lines 6-7 describe that the water jet is directed from the water nozzle 26 in a substantially horizontal direction. This is indicated by the arrow 32 in Figures 2 and 3. Thus, the horizontal direction of the water jet is transverse to the vertical rotational axis of the disk 28.

The cited references do not meet this limitation of claim 4. More particularly, in Snyder, as seen in Figure 1, the water nozzle 62 directs a jet of water onto the disk 63. This water jet is directed vertically downwardly onto the disk, which rotates about a vertical axis. Thus, Snyder does not direct a water jet toward the disk in a direction transverse to the rotational axis of the disk, as required by claim 4.

In Jordan, the water nozzle 76 directs a jet of water vertically upwardly onto the disk 150, which rotates about a vertical axis. See Figure 1 of Jordan. Thus, Jordan does not direct the

water jet toward the disk in a direction transverse to the rotational axis of the disk, as required by claim 4.

Braden also fails to direct a water jet toward the disk in a direction transverse to the rotational axis of the disk, in accordance with claim 4. As seen in Figure 2 of Braden, the water jet is directed by the nozzle vertically onto the disk, which rotates about a vertical axis.

Therefore, Braden does not meet this limitation of claim 4.

Therefore, claim 4 distinguishes over the cited references so as to be allowable, along with claims 5-7 depending therefrom.

Independent claim 1 requires that the water nozzle and the disk be spaced apart. The Examiner acknowledges that the primary references, DE '214 and EP '720 do not meet this limitation. As seen in Figure 1 of the '214 patent, the nozzle 8 and the disk 10 are connected to one another. Similarly, in the '720 patent, the nozzle 6 is connected to the disk 12.

The Examiner suggests that the nozzle and disk of the '214 and '720 patents can be spaced apart, in view of the spaced apart nozzles of Jordan and EP '876. However, the Examiner cites no teaching, suggestion, or motivation for such a combination. Furthermore, such a combination will not function. If the disks in the primary '214 and '720 patents are vertically separated from the nozzles, as in Jordan, the horizontal spray from the nozzles will not be directed onto the disks, as further required by claim 1. In Jordan, the nozzle 76 and disk 150 are vertically spaced apart. Such a vertical spacing of the nozzle and disk in the '214 and '720 patents will cause the water to be sprayed substantially horizontally from the nozzles, without being directed onto the disks spaced vertically from the nozzles. Therefore, the Examiner's asserted combination of Jordan with either of the primary references simply will not work and does not meet the limitations of claim 1.

The EP '876 patent does not disclose any rotating disks, in accordance with claim 1. Therefore, EP '876 patent does not overcome the deficiencies of the primary references and Jordan.

More particularly, as the Federal Circuit in *In re Fritch* stated:

Obviousness can not be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under §103, teaching of references can be combined only if there is some suggestion or incentive to do so. Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added) *In re Fritch*, 23 U.S.P.Q. 1780, 1783-84 (Fed. Cir. 1992).

It was further stated by the Federal Circuit in *Ex Parte Levengood* that:

"...an Examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence that the motivating force which would compel one skilled in the art to do what the patent applicant has done." *Ex Parte Levengood*, 28 U.S.P.Q.2d 1300, 1302 (Fed. Cir. 1993).

As the Board of Patent Appeals and Interferences has stated, citing references which merely indicate that isolated elements and/or features recited in claims are known is not sufficient basis for concluding that the combination of claimed elements would have been obvious." *Ex parte Hiyamizu*, 10 U.S.P.Q.2d 1393, 1394 (B.P.A.I. 1988).

In short, as stated by the Federal Circuit,  
"It is wrong to use the patent-in-suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims-in-suit."

*Orthopedic Equipment Company v. United States*, 702 F.2d 1005, 1012, 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983).

The Federal Circuit has also explained that there must be "some objective teaching" leading to the combination. *In re Fritch*, 972 F.2d 1260, 1265 (Fed.

Cir. 1992). As further explained in *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) this showing must be "clear and particular."

Here, there is no clear and particular objective teaching for combining Jordan with either of the primary references. Furthermore, such a combination still would not meet the limitations of claim 1 for a horizontal water jet directed onto a disk having a vertical axis of rotation, with the disk and nozzle being spaced apart. Accordingly, claim 1 distinguishes over the cited references so as to be allowable, along with dependent claims 2 and 3.

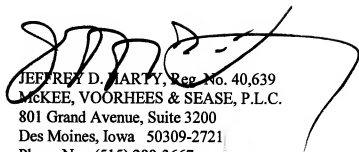
For purposes of 37 C.F.R. § 1.116, this Amendment is being presented after the Final Rejection so as to address and overcome the § 112 rejection of claims 1-7, the objections to the drawings and Specification, and the §§ 102 and 103 rejections of the claims. Applicant has not amended the claims, such that no new issues are raised and no new search is necessary.

In view of the foregoing, Applicant respectfully requests that this Amendment be entered and that a Notice of Allowance be issued.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Marty', is written over the printed name and firm information.

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